IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 23 OF 2005

Shri Raghunath Dadu Bhedate ... Appellant

V/s

Smt. Sakhubai Dattu Bhedate & ors. ... Respondents

Mr. Dilip Bodake for the appellant.

Mr. P.B.Shah for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 14TH JULY, 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the Addl. District Judge, Karad, Dist. Satara, dated 17.3.2004 allowing the appeal partly to the extent of part of the suit property and dismissing the appeal regarding remaining reliefs, setting aside the order passed by the Civil Judge, Jr.Divn., Karad, Dist. Satara, dated 27.9.1996 decreeing the suit in toto issuing perpetual injunction against the defendants in respect of the suit land of Gat No. 54 as well as Gat No.58.

2. I have heard the learned counsel for both parties. Perused the record.

3. The plaintiff filed the suit for perpetual injunction simplicitor on the ground that he was in possession of the suit property of Gat No. 54 as well as Gat No.58 and defendants were obstructing his possession in the suit property and, as such, the suit for perpetual injunction came to be filed.

The defendants contested the suit on various grounds inter-alia submitting that he was in possession of the suit property and the plaintiff was not bonafide owner of the suit property. Hence the suit was sought to be dismissed.

4. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the plaintiff has proved that he was in possession of the suit property on the date of the suit and his possession was threatened and, as such, the plaintiff was held entitled to perpetual injunction against the defendants.

The appeal was carried to the Addl. District Judge.

The learned Addl. District Judge, Karad, on the basis of available evidence came to the conclusion that the plaintiff's suit in respect of land of Gat No.58 was proved as he was found in possession thereof, whereas he was not found in possession of land of Gat No.54 and, therefore, suit to that extent came to be dismissed and appeal was partly allowed. Hence the present appeal.

5. At the outset, it may be noted that there is no substantial question of law involved in this appeal and the issue of lawful possession of the concerned party on the date of the suit is purely the question of fact which is seen to be properly determined by the lower appellate Court, who, on the basis of available evidence came to the conclusion that there is absolutely no evidence on behalf of the plaintiff that he was in possession of Gat No.54 at the time when the consolidation scheme was being prepared, finalized and implemented. Bare entries of the plaintiff would not amount to possession of the plaintiff. So far as the land of Gat No.58 is concerned, it was found to be in possession of the plaintiff which was also admitted by the defendant and on that basis the lower appellate Court has held that plaintiff had proved that he was in lawful possession of the suit proeprty on the date of

the suit only to the extent of land of Gat No.58 and not land of Gat No.54.

6. Taking into account all these material aspects relating to the evidence on record, I hold that there is no substantial question of law involved and moreover the evidence on record is properly appreciated by the lower appellate Court and, therefore, it would brook no interference.

In the result, the appeal stands dismissed with no order as to costs. Consequently, the civil application No. 20 of 2005 also stands dismissed with no order as to costs.

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